

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 2385 of 2004(H)

EP.139/2003 IN O.S.276/98 of MUNSIFF COURT, PAYYANNUR
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PETITIONER:

K.P.KARTHIYANI, M/O. K.P.SURESH,
KOLLAMKUNNU PARAMBIL, CHANDAPPURA,
P.O. KADANNAPPALLY, KANNUR DISTRICT.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS:

1. THE MANAGER,
NORTH MALABAR GRAMIN BANK, CHERUTHAZHAM BRANCH,
P.O. PILATHARA, KANNUR DISTRICT.
2. K.P.RAGHUNATH, S/O. NARAYANAN,
AGED 34 YEARS, KOLLANKUNNU PERAMBIL,
CHANDAPPURA, P.O. KADANNAPPALLY.

R1 BY ADV. SRI.M.P.RAMACHANDRAN NAIR
SRI.DEVAN RAMACHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC.2385/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE TYPED COPY OF THE ORDER DT.13.1.04 OF MUNSIFF'S
COURT, PAYYANNUR IN EP.139/03 IN O.S.276/98.

/true copy/

PIUS C. KURIAKOSE, J.

.....
W.P.(C)No.2385 OF 2004
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DATED THIS THE 6TH JUNE, 2007

J U D G M E N T

The issue involved in this case is between the petitioner and the 1st respondent only. The 1st respondent is already served with notice.

2. The mother of the 3rd judgment-debtor who was ordered to be detained in civil prison in execution of a money decree obtained by the 1st respondent-bank is the petitioner in this proceeding under Article 227 of the Constitution of India impugning Ext.P1 order of detention passed by the execution court. While admitting this Writ Petition, this Court directed immediate release of the petitioner's son from the jail on condition that he pays a sum of Rs.10,000/-. I am informed that the above payment was made. In fact, it had been specifically ordered that if payment is not made, the Writ Petition will stand dismissed.

3. On reading through Ext.P1, I find that arrest was ordered against the son of the petitioner on the reason that he did not appear in response to the notice under Rule 37 of Order XXI C.P.C. It is clear that no enquiry as envisaged by Rule 40 of Order XXI was conducted by the court below before finding that the petitioner's son wilfully neglected to pay the decree debt in spite of sufficient means. The

impugned order will show that the court below has acted upon the affidavit submitted on behalf of the bank and has proceeded to issue the order of detention on the ground that the petitioner's son has not expressed any intention to be declared insolvent.

4. In view of the obvious position that no enquiry as envisaged by Rule 40 was conducted by the learned Munsiff, I dispose of the Writ Petition observing that the petitioner's son will not be detained further in execution of the decree in question unless it be on the strength of a finding regarding the sufficiency of his means and the wilful nature of his negligence in the matter of payment on the basis of an enquiry under Rule 40 of Order XXI. No costs.

(PIUS C.KURIAKOSE, JUDGE)

tgl

